

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION

In the Matter of

CONNECTICUT LIGHT & POWER
COMPANY

Employer

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS,
LOCALS 420 AND 457

Petitioner

Case 01-RC-112451

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks to represent a combined unit of professional and non-professional employees in the following classifications employed by the Employer (herein also referred to as CL&P) throughout the State of Connecticut: senior circuit owners, circuit owners, large and complex construction engineers, senior engineers, assistant engineers, associate engineers, engineering technologists, associate engineering technologist, senior engineering technologists, engineering specialist, and senior field technicians. Although otherwise in accord as to the scope and composition of the unit, the Employer asserts that circuit owners (COs) and senior circuit owners (SCOs) are supervisors under Section 2(11) of the Act, as well as managerial employees. For the reasons set forth below, I find that the Employer has failed to satisfy its burden of establishing the supervisory and managerial status of the COs and

SCOs. Accordingly, they shall be included in the unit and permitted to vote in the election.

The petition in this case was filed under Section 9(c) of the Act. The parties were provided an opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

A. Facts

1. Background

CL&P is a public utility engaged in the transmission and distribution of electrical power to commercial and residential customers throughout Connecticut. It has facilities throughout the state in service of its customers in 149 cities and towns.

COs and SCOs are part of the Employer's Asset Management group, which reports to Ken Bowes, vice president of Energy Delivery Services. Dominick Lauria is the director of Asset Management and reports to Bowes. Four zone managers, one for each of CL&P's four geographical divisions, report to Lauria.¹ Each zone manager oversees a number of COs and SCOs in three to five zones. A small zone may have two or three COs, one of which is an SCO, while a large zone might have three to five COs, including two SCOs.

The approximately 25 COs and 15 SCOs work in area work centers located throughout Connecticut. In addition to COs and SCOs, area work centers typically employ linemen, who report to the Operations department, and

¹ The four zone managers are: Susan Gaylord, central division; Ed Cannucciari, western division; Harshad Sheth, eastern division; and James Allen, southern division.

electricians, who are part of the Maintenance department.² Additionally, each area work center employs a meter service group, field technicians, and clerical and administrative employees.

2. CO and SCO Duties and Responsibilities

COs and SCOs have identical duties; SCOs are simply more experienced COs. Accordingly, both classifications will hereafter be referred to as COs, except when there is a distinction between the two classifications.

Most COs are engineers with extensive technical training and expertise in CL&P's electrical circuits. COs have primary responsibility for the integrity of the circuits in their respective geographical areas, as well as for improvements to the distribution system. They are responsible for identifying problems on the approximately 20 circuits assigned to them, determining their causes and developing corrective plans. COs spend about 60-65 percent of their time at area work centers, and the remainder of their time in the field, gathering information in order to assess problems and design fixes.

On a daily basis, COs review all outages on their circuits, evaluating problems and reviewing response times to make sure that any outages have been restored. Additionally, COs review all the loads on each circuit to ensure that they are within the capabilities of the equipment on the circuits. During peak summer load periods, in particular, COs develop projects to fix any load issues on their circuits. COs are also responsible for the reliability of the circuits, and regularly create projects to address reliability.

For corrective actions costing less than \$10,000, COs generally have authority to correct the problems without approval from higher management. In this regard, they routinely work with supervisors of operations, maintenance, and vegetation management to implement the actions they have deemed necessary and appropriate. They do not have direct supervision over any employees or departments, but collaborate with other departments to ensure that corrective actions are carried out by the appropriate departments. For example, a CO

² The Employer's linemen, including chief and lead linemen, and electricians are represented by the Petitioner.

might contact a maintenance supervisor, describe a problem in the field, and request that an electrician be sent out to troubleshoot. Similarly, a CO might ask a line supervisor to send a lineman out to remove vines from a pole. COs do not have the authority to contact field employees directly to assign such work.

COs are responsible for developing a proposal to fix those problems they've identified that are more complex or cost more than \$50,000. It is the CO's responsibility to present the proposal, along with alternatives and cost estimates, to the Employer's Operating Company Review Committee (OCRC). The OCRC manages CL&P's capital program, with an annual budget of \$100 million.

The OCRC is composed of the director of Engineering and Asset Management, the four circuit zone managers, a supervisor of substation asset management, a senior engineer and a manager from each of the following groups: Central Engineering, Construction, and Operations. The committee usually meets once a week for the purpose of evaluating proposals made by COs for circuit improvements. The OCRC determines, from an engineering perspective, whether the project is necessary, whether the expense is justified, and whether the CO has considered alternative solutions.

Projects are approved or rejected by the OCRC based on a simple majority vote, with all members having equal voting power. On occasion, a CO is appointed to fill in when his/her circuit zone manager cannot make a meeting. In that capacity, the CO has the same voting power as all other committee members. The Employer presented several examples of CO participation in OCRC meetings where large projects were approved. However, SCO David Brown testified that, in his 15 years as CO and SCO, he had never substituted as a voting member of the OCRC, nor had any of the other COs in his district. SCO Mark Santoro testified that he fills in for his manager at OCRC meetings about twice a year. On average, circuit zone managers as a group miss only about six OCRC meetings a year.

Although not included in their job description, some COs perform on-call supervisory duties during overnight hours.³ The vast majority of on-call supervision is performed by first line supervisors: of the 40 current COs, fewer than half perform on-call supervisory duties. Other employees serving as on-call supervisors include certain engineers, line supervisors, new service supervisors, meter service supervisors, and project managers from the System Projects department. According to the Employer's On-Call Supervisor Handbook, on-call supervisors have "the ultimate authority and responsibility to manage work in the field safely and effectively." They perform the same duties when they are on-call that supervisors perform during the day shift: assigning crews to perform repair work, calling crews in and releasing them, splitting crews, and redirecting crews to work on other outages.⁴

Mark Santoro, an SCO who performed on-call supervision in 2009 and 2010, described his on-call role and activities. As the moniker suggests, on-call supervisors must be available to receive calls after hours if there is a power outage in the area. Santoro estimated that he received calls about half the nights he was on-call. When he received a call from a lineman or dispatcher requesting authorization for manpower, for a new pole, or for a digging crew, Santoro routinely approved it, trusting the caller's professional judgment. The dispatcher then used a computer program to call in the appropriate number of employees to fix the outage and restore power, and the chief or lead lineman assigned employees to specific tasks. As on-call supervisor, Santoro usually performed oversight from his home, only occasionally going out into the field when a problem arose.

COs view themselves as facilitators during on-call work. They field and approve requests from linemen and dispatchers for additional crew and equipment, ensuring that the crews have what they need to restore power to CL&P's customers. In this regard, they may reassign a crew to a different site as

³ One CO position posting did include on-call duties as part of the functions of the job.

⁴ With respect to the last two duties, chief and lead linemen and dispatchers -- bargaining unit employees represented by Local 420 and 457 -- also have this authority, even when they are not filling in as on-call supervisors.

circumstances require, but they do not assign specific tasks to linemen or other employees, deferring to the expertise of the chief or lead linemen.

The frequency of on-call duties varies greatly from district to district and from CO to CO, as do the number of on-call hours logged. The Madison and Torrington districts, for example, each have seven individuals in their on-call rotations. As a result, COs in those districts serve as on-call supervisor one out of every seven times an on-call supervisor is needed. In Cheshire, where there were nine on-call supervisors on the roster when CO Santoro was in the rotation, each covered one-ninth of the time. The Employer produced payroll records purporting to show the number of on-call supervisory hours for each CO between 2011 and July 2013. However, Employer witnesses could not state with certainty that the hours reported in those records reflected only on-call supervisory work. Moreover, SCO Mark Santoro, who has not worked as an on-call supervisor since early 2010, appears in those records, casting further doubt on the records' accuracy and usefulness. Nevertheless, CO Matt Secovich and SCO David Brown appear to work more on-call hours than most other COs, with Secovich logging about 200 hours in the first seven months of 2013, and David Brown averaging about 300 hours a year.

According to the Employer, on-call supervisors, including COs, have authority to send employees home for refusing to carry out their assignments, but cannot actually issue formal disciplinary action. The Employer also asserts that on-call supervisors have authority to conduct a "fitness for duty test" if they suspect an employee is intoxicated or otherwise impaired. There is no evidence in the record, however, that a CO has ever exercised such authority. Moreover, SCO Santoro testified that, when serving as on-call supervisor in 2009 and 2010, he was never told he had authority to send an employee home. Santoro asserted that, had such a situation arisen, he would not have handled it himself, but rather, as he was instructed to do, he would have called the regular supervisor in to assess and deal with the impaired employee. SCO Brown, who logs more on-call hours than the average on-call supervisor, similarly testified

that he was trained to contact the regular supervisor if an employee appeared to be unfit for duty or was insubordinate.

Like all CL&P employees, COs have "storm assignments" which they perform in severe storms or other emergencies.⁵ During storm duty, most COs are assigned to be "analyzers", using computers to review and map storm-related outages on their circuits and determine the number and locations of customers that require assistance.

SCOs typically serve as planning section unit leaders or field supervisors during storms. In that capacity, they use their analytical ability and understanding of the Employer's processes to analyze the number of outages, determine their priority according to CL&P guidelines, and develop a plan to mobilize crews and other resources to address them. In performing these tasks, they rely on data entered by various other employees, including the analyzers. SCO Carmine Giuliani, whose storm assignment is wires-down supervisor, gathers information regarding wires-down situations and sends appropriate personnel to those locations. Since the Employer tries to restrict employees to 16-hour shifts, the wires-down supervisor substitutes personnel as necessary to ensure coverage of the situation and compliance with CL&P policies.

While they are acting as planning section unit leaders or supervisors during storms, SCOs have no authority to discipline other employees, except to send them home for a major infraction such as gross insubordination. It does not appear, however, that an SCO has ever sent an employee home for an infraction of the Employer's work rules. SCOs do not approve time sheets or evaluate the storm performance of those who report to them.

During particularly damaging storms, such as Sandy in 2012, COs and other employees may take a more active role. For example, CO Josh Lahaie has acted as an Operations Section unit leader during certain storms. That role is typically filled by zone managers or operations managers, and there was no evidence produced that any CO other than Lahaie has ever acted in this

⁵ In 2011 and 2012, Connecticut experienced at least three major storms causing widespread power outages. However, witnesses acknowledged that the frequency and intensity of these storms is not the norm.

capacity. It is undisputed, however, that COs and all other employees have unusual authority in storm situations. As SCO Brown stated, "In a storm situation, any employee has the opportunity to ask another employee for assistance. I can ask a director, if he's going out for lunch, to go check this out for me.... Or a meter reader could tell a director to go look at a patrol."

The ability to handle on-call and storm duties is sometimes reflected in COs' performance evaluations. However, there is no evidence that COs and SCOs are held accountable for the performance of other employees in those situations.

The Employer takes the position that SCOs participate in the evaluation process for COs. In support of this position, director of engineering Dominick Lauria testified that, when he was a zone manager, he would ask SCOs for "input" into the performance evaluations of COs, and factor the input into his appraisals. According to Lauria, zone managers "rely very heavily" on SCOs' input, as they work with the COs on a daily basis and are therefore in a better position than the zone managers to assess their performance. Although Lauria testified that those evaluations impacted employee wages, there does not appear to be a direct or measurable correlation between the input given by COs and the wage increases received.⁶ In fact, in giving input in evaluations, SCOs do not fill out any forms, prepare any evaluations, or sit in on the evaluation meeting. Instead, zone managers may informally ask SCOs for input regarding the performance of COs, and incorporate such input in their appraisals.

COs represent the Employer at public hearings and before town officials and large customers. At such meetings, they are the spokesmen for CL&P, and have authority to commit resources to meet customer needs.⁷ Two COs have sole responsibility for the casino at Foxwoods, one of the Employer's largest customers, where they are the primary CL&P representatives. At Foxwoods, the

⁶ Zone manager Sheth testified that the input he receives from SCOs may lead to a lower rating that affects a CO's wages, or a higher rating that accelerates a CO's promotion.

⁷ Lauria testified that COs could commit a "small amount" of money without prior approval, explaining that a \$5000 expenditure would be acceptable in these situations.

COs appear to have greater spending authority, but Lauria acknowledged that to be a unique situation.

COs have no authority to hire or fire any employee, to adjust employee grievances, or to discipline employees in the course of their day-to-day duties. The Employer presented evidence of two instances in which SCOs participated in hiring decisions. In about 2011, SCO Bob Perras interviewed candidates for a CO position along with then-zone manager Dominick Lauria, participating equally in the interview. On another occasion, CO Chris Aiello participated in the interview process for a field supervisor line position along with an operations manager. However, only the manager's name appeared on the interview summary, and there was no testimony regarding the relative input of the CO in the recommendation and hiring process.

B. Analysis and Conclusions

1. Supervisory Status of COs

It is well-established that the burden of proof rests upon the party alleging that an individual is a supervisor. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 694 (2006); accord *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711-712 (2001); *Dean & DeLuca New York, Inc.*, 338 NLRB 1046, 1047 (2003). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Oakwood Healthcare, Inc.*, supra. The Board is reluctant to confer supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. *Id.*, at 688; *Vencor Hospital- Los Angeles*, 328 NLRB 1136, 1138 (1999); *Chevron Shipping Co.*, 317 NLRB 379,381 (1995). The Board has found that whenever the evidence is in conflict or otherwise inconclusive on a particular indicia of supervisory authority, supervisory status has not been established on the basis of that indicia. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004); *Sears Roebuck & Co.*, 304 NLRB 193 (1991). Indeed, a

lack of evidence is construed against the party asserting supervisory status. *The Wackenhut Corp.*, 345 NLRB 850, 854 (2005).

Based upon the foregoing and the record as a whole, I find that the Employer has failed to satisfy its burden of establishing that the COs possess and exercise supervisory authority within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note the undisputed absence of any evidence that the COs have the authority, in the interest of the Employer, to transfer, suspend, layoff, recall, promote, or discharge other employees, or to adjust their grievances, or to effectively recommend any of these actions using independent judgment. Thus, the only arguable basis for finding that the COs are supervisors is their assignment and responsible direction of work performed by other employees, their involvement in hiring employees and rewarding employees through performance evaluations, and their assumption of supervisory duties in on-call situations and storms, including the authority to discipline employees.

a. Performing On-Call Supervisory and Storm Duties

The Employer contends that the COs are statutory supervisors because they assume the responsibilities of first line supervisors in their capacity as on-call supervisors and sometimes during their storm assignments. The appropriate test for determining the status of employees who substitute for supervisors is whether the part-time supervisors spend a "regular and substantial" portion of their working time performing supervisory tasks. *St. Francis Medical Center-West*, 323 NLRB 1046, 1046 (1997). Here, the evidence does not support a finding that the COs are statutory supervisors based on their sporadic exercise of some limited supervisory authority during on-call shifts and storms.

First, it is undisputed that fewer than half of all COs actually rotate as on-call supervisors. Moreover, those who do perform on-call duties do not spend a "regular and substantial portion" of their work time doing so. Even the most prolific COs spend only 10-15 percent of their time working on-call shifts, and the vast majority do not spend close to that much time. Indeed, the fact that fewer than half of all COs perform on-call duties at all, together with the exclusion of on-call supervision from their job description, supports a finding that on-call

supervision is a minor and optional part of the COs' job. Thus, I do not find that the performance of on-call supervisory duties constitutes a regular or substantial part of the COs' job.

Similarly, any supervisory authority arising from COs' storm assignments is sporadic and insignificant. Even assuming, *arguendo*, that COs possess supervisory authority during storms, such responsibilities do not represent a regular or substantial part of their overall job duties. By their very nature, storms causing power outages are not a regular occurrence. Additionally, although it is undisputed that 2011 and 2012 saw several major storms causing massive power outages, these years reflected the exception rather than the rule.

Accordingly, the Employer has failed to demonstrate that COs are statutory supervisors because they assume the responsibilities of first line supervisors in their capacity as on-call supervisors and sometimes during their storm assignments.

b. Assigning and Responsibly Directing Employees

In *Oakwood Healthcare Inc.*, supra, the Board defined the term "assign" as "the act of designating an employee to a place (such as location, department or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee." *Id.* at 689. The assigned duty must be significant and not an ad hoc instruction to perform a discrete task. Further, authority to assign work confers supervisory status only if the putative supervisor exercises independent judgment when making such assignments, meaning the individual exercises authority that is free from the control of others and requires forming an opinion or evaluation by discerning and comparing data. *Id.* at 692-693. The degree of discretion exercised must rise above the "routine or clerical." *Id.*

There is insufficient evidence in the record to establish that COs assign employees within the meaning of *Oakwood*. There is no contention that, as on-call supervisors or planning section unit leaders, COs assign linemen or other employees to a place or time, i.e., to a job site or to a shift. Indeed, it is the linemen and dispatchers who inform the COs of the location of a problem, such

as an outage, not the other way around. Nor is there any evidence that COs assign linemen to a significant overall duty. At most, COs authorize dispatch to initiate the process of calling in and releasing crews as requested by the linemen. Moreover, there is no evidence that a CO has ever refused the request of a lineman or dispatcher for additional crew or equipment.

Further, the Employer has failed to demonstrate that any assignments made by the COs require independent judgment. In on-call and storm situations, COs authorize the resources required by the linemen in order to get power restored. There is no evidence suggesting they evaluate the project themselves, or make independent determinations of what work is required. It is true that COs have authority, as on-call supervisors or as part of their storm duties, to split a crew, send a crew to a different work site, or otherwise rearrange the personnel working on an outage. However, they make these assignments based on their understanding of the Employer's priorities during emergency situations, rather than on any assessment of employees' skills in relation to the jobs requiring manpower.

With respect to "responsible direction," the Board explained in *Oakwood* that, if a person has "men under him" and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both "responsible" and carried out with independent judgment. For direction to be "responsible," the person directing the oversight of the employee must be accountable for the performance of the task by the other. To establish accountability, it must be shown that the employer delegated to the putative supervisors authority to direct the work and take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisors if they do not take these steps. *Oakwood Healthcare, Inc.*, *supra* at 689-692.

The Employer contends that the COs responsibly direct other employees in on-call and storm situations. In particular, the Employer asserts that COs who rotate as on-call supervisors are held accountable for reporting to day shift management what happened during the overnight shift, keeping crews longer

than necessary, and other actions. However, the proffered evidence establishes only that COs are held accountable for their own performance and does not demonstrate, as required, that they face the prospect of adverse consequences based on the performance of their subordinates.

Accordingly, the Employer has failed to demonstrate that COs either assign overall tasks or responsibly direct employees within the meaning of *Oakwood*.

c. Disciplining Employees

The Employer has similarly failed to establish that COs possess and exercise authority to discipline employees. The Employer contends that COs have authority to send employees home for disciplinary reasons while fulfilling their on-call or storm duties. In particular, the Employer asserts that COs may send someone home for insubordination or for being unfit to work. However, several COs testified that they have never been told they have such authority. Moreover, two COs testified that they were trained to call in the employee's regular supervisor if they suspected that the employee was intoxicated or otherwise unfit for work. Similarly, COs do not believe they have the authority to send an employee home for insubordination.

Additionally, to the degree that the Employer relies on the COs' authority to send employees home in cases of intoxication or gross insubordination, the Board has long held that the authority to send employees home for flagrant violations does not demonstrate supervisory authority, because it does not require the use of independent judgment. *Michigan Masonic Home*, 332 NLRB 1409, 1411 fn. 5 (2000).

Accordingly, the Employer has failed to satisfy its burden of establishing that the COs' involvement in the disciplinary process warrants the conclusion that they are Section 2(11) supervisors.

d. Evaluating Employees

Assuming that SCOs provide informal input into the evaluations of the COs and other employees, their involvement does not establish their supervisory authority. Because Section 2(11) does not include authority to evaluate as a

supervisory function, the Board has long held that when an evaluation does not, by itself, affect the wages and/or job status of the employees being evaluated, the individuals performing such an evaluation will not be found to be statutory supervisors. *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002). Here, CL&P's evaluations are not linked to merit raises; nor is there any evidence that they have any other impact on the job status of the employees being evaluated. Accordingly, the Employer has failed to satisfy its burden of establishing that the COs' involvement in the evaluation process warrants the conclusion that they are supervisors under Section 2(11).

e. Hiring Employees

CL&P's assertion that COs are involved in hiring employees or in making recommendations for hiring is not supported by the record. The Employer presented evidence of only two situations in which a CO participated in the interviews of prospective hires. In both situations, a higher level manager participated in the interviews as well. The Board has held that mere participation in the hiring process, absent authority to effectively recommend hire, is insufficient to establish supervisory authority. *North General Hospital*, 314 NLRB 14, 16 (1994). Furthermore, where admitted supervisors participate in the interview process and thus independently assess the candidates' suitability, it cannot be said that the employees whose status is at issue have authority to effectively recommend hiring. *Ryder Truck Rental, Inc.*, 326 NLRB 1386, 1387 fn. 9 (1998). Accordingly, I find that the Employer has failed to satisfy its burden of establishing that the COs' involvement in the hiring process warrants the conclusion that they are supervisors under Section 2(11).

2. Managerial Status

Although the Act makes no mention of managerial employees, it is well-established that they are excluded from the Act's coverage because their functions and interests are more closely aligned with management than with unit employees. *International Transportation Service*, 344 NLRB 279, 285 (2005). The Board defines managerial employees as those who "formulate and effectuate management policies by expressing and making operative the

decisions of their employer, and who have discretion in the performance of their jobs independent of their employer's established policies." *Case Corp.*, 344 NLRB 939, 948 (1991), *enfd.* 995 F.2d 700 (7th Cir. 1993). Employees will be excluded from the Act's protection on the basis of managerial status only if they "represent [] management interests by taking or recommending discretionary actions that effectively control or implement employer policy." *NLRB v. Yeshiva University*, 444 U.S. 672, 687-688 (1980).

The Board has acknowledged that work based on technical or professional competence often involves the exercise of discretion and judgment. Nevertheless, technical and professional employees are not necessarily managerial employees. Even though their work may bear on the direction of the company, or reduce the employer's cost of doing business, technical and professional employees do not possess managerial authority merely on the basis of their status. *Case Corp.*, *supra* at 948. Like supervisory status, the definition of managerial employees must be construed narrowly, since employees who are found to be managers are denied substantial statutory rights. Moreover, as with supervisory status, the party asserting managerial status has the burden of proving it. *George Mee Memorial Hospital*, 348 NLRB 327, 333 (2006).

In *Connecticut Humane Society*, 358 NLRB No. 31 (April 12, 2012), the Board recently rejected an employer's argument that a manager of development and technology was a managerial employee because she managed the Employer's software and made recommendations for computer and software purchases. Instead, the Board held that the employee merely used her technical expertise to further the Employer's interests and financial goals, but not in a managerial capacity. Similarly, the Board has refused to find managerial status for a clinical system coordinator, who used her computer expertise in helping to develop and implement software programs;⁸ a payroll and billing representative who had authority to order modifications to programs costing over \$23,000;⁹ and

⁸ *Nurses United for Improved Patient Healthcare*, 338 NLRB 837, 840 (2003).

⁹ *International Transportation Service*, *supra*, 344 NLRB at 279.

an engineer who the Board found had no discretion to deviate from his employer's established policies.¹⁰

The Employer asserts that the COs responsibility for maintaining the integrity of CL&P's circuits confers managerial status because it is "directly aligned with the [Employer's] management goals." It further asserts that the COs work is "so integral to the direction of the Company that their success or failure in the performance of their jobs has a significant and substantial impact" on the Employer's ability to serve its customers. This includes the COs' authority to commit up to \$10,000 without higher approval, as well as their proposals for improving service delivery, which may cost in the millions. However, the Employer cites no CO duties akin to "formulat[ing] and effectuat[ing] management policies", nor any "discretion in the performance of their jobs independent of their employer's established policies."

COs perform highly technical work that supports CL&P's goals of providing reliable electrical power to customers in a safe and cost-effective manner. Despite their authority to commit up to \$10,000 without approval, and their responsibility for designing projects to enhance the Employer's delivery of service, these are insufficient to elevate them to the status of managerial employees. Accordingly, I find that the Employer has failed to satisfy its burden of establishing that the COs are managerial employees under Board law.

C. The Voting Units

In view of the statutory requirement that the Board may not join professional and non-professional employees in a single unit without the desires of the professional employees being determined in a separate vote, I shall direct separate elections in voting groups 1 and 2 pursuant to the Board's decision in Sonotone Corp., 90 NLRB 1236 (1950).¹¹ The employees in group 1, the professional employees, will be asked the following two questions on their ballots:

¹⁰ *Case Corp.*, *supra*, 304 NLRB at 939.

¹¹ The parties stipulated that, if the COs and SCOs are included in the unit, they should be included in the professional category.

1. Do you desire to be included in the same unit as non-professional employees employed by the Employer for the purposes of collective bargaining?
2. Do you desire to be represented for the purposes of collective bargaining by International Brotherhood of Electrical Workers, Locals 420 and 457?

If a majority of the professional employees in voting group 1 vote yes to the first question, indicating their desire to be included in a unit with non-professional employees, they will be so included. Their vote on the second question will then be counted with the votes of the non-professional employees in voting group 2 to decide the representative for the combined bargaining unit. If, on the other hand, a majority of the professional employees in voting group 1 do not vote for inclusion, they will not be included with the non-professional employees and their votes on the second question will be separately counted to decide whether or not they wish to be represented by the Petitioner in a separate professional unit.

The ultimate determination as to the appropriate unit or units is based upon the result of the election. However, I make the following findings with regard to the appropriate unit:

1. If a majority of the professional employees vote for inclusion in a unit with non-professional employees, I find that the following employees will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time senior circuit owners, circuit owners and large and complex construction engineers, senior engineers, assistant engineers, associate engineers, engineering technologists, associate engineering technologists, senior engineering technologists, engineering specialists, and senior field technicians, employed by Connecticut Light & Power Company throughout the State of Connecticut, excluding guards, clerical and confidential employees, and supervisors as defined in the Act.

2. If a majority of the professional employees do not vote for inclusion in the unit with the non-professional employees, I find the following two units to be

appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

UNIT 1:

All full-time and regular part-time senior circuit owners, circuit owners and large and complex construction engineers, senior engineers, assistant engineers, associate engineers, engineering technologists, associate engineering technologists, and senior engineering technologists, employed by Connecticut Light & Power Company throughout the State of Connecticut, excluding guards, clerical and confidential employees, and supervisors as defined in the Act.

UNIT 2:

All full-time and regular part-time engineering specialists and senior field technicians employed by Connecticut Light & Power Company throughout the State of Connecticut, excluding guards, clerical and confidential employees, and professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTIONS

The National Labor Relations Board will conduct separate secret ballot elections among the employees in the voting groups found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Brotherhood of Electrical Workers, Locals 457 and 420**. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote are those in the voting groups who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining whether there is an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before November 14, 2013. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,¹² by mail, or by facsimile transmission at 617-565-6725. To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

¹² To file the eligibility list electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu, and follow the detailed instructions.

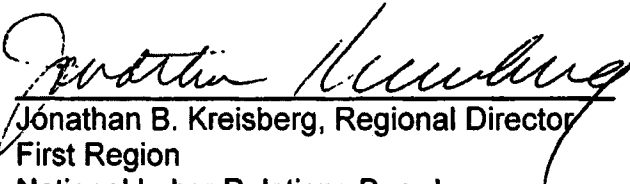
Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by November 21, 2013. The request may be filed electronically through the Agency's website, www.nlr.gov, but may not be filed by facsimile.

DATED: at Boston, Massachusetts this 7th day of November, 2013


Jonathan B. Kreisberg, Regional Director
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